

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 32BJ,

Plaintiff,

-against-

SUPERIOR MAINTENANCE, INC.,

Defendant.  
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**Case No.: 07-CV-8339**

**ANSWER TO COMPLAINT  
TO ENFORCE  
ARBITRATION AWARD**

SIRS:

The Defendant, SUPERIOR MAINTENANCE, INC. (hereinafter referred to as "SUPERIOR"), by its attorneys, TRIVELLA, FORTE & SMITH, LLP., as and for its Answer to the plaintiff's, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ (hereinafter referred to as "SEIU 32BJ"), Complaint dated September 24, 2007, alleges as follows upon information and belief:

1. With respect to paragraph "1" of the Complaint, the allegations contained therein are plaintiff's characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint and respectfully refers this Court to the statute for its true content and meaning.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Complaint and respectfully refers this Court to the statute for its true content and meaning.

4. Admits the allegations contained in paragraph “4” of the Complaint that SEIU 32BJ is a labor organization but respectfully refers this Court to the National Labor Relations Act (hereinafter referred to as “NLRA”) for its true content and meaning.

5. Admits the allegations contained in paragraph “5” of the Complaint that SUPERIOR is a maintenance service provider and has a location at 1 West Red Oak Lane, White Plains, New York but respectfully refers this Court to the NLRA for its true content and meaning.

6. Admits the allegations contained in paragraph “6” of the Complaint that SUPERIOR is a signatory to a collective bargaining agreement called the Hudson Valley Contractors Agreement (hereinafter referred to as “HVCA”) with SEIU 32BJ but respectfully refers this Court to the HVCA for its true content and meaning.

7. Admits the allegations contained in paragraph “7” of the Complaint that SUPERIOR’S employees are union members but respectfully refers this Court to the HVCA for its true content and meaning.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint and respectfully refers this Court to the HVCA and Rider for its true content and meaning.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Complaint and respectfully refers this Court to the HVCA for its true content and meaning.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Complaint and respectfully refers this Court to the HVCA and Rider for its true content and meaning.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint and respectfully refers this Court to the HVCA and Rider for its true content and meaning.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint and respectfully refers this Court to the HVCA and Rider for its true content and meaning.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Complaint and respectfully refers this Court to the HVCA and Rider for its true content and meaning.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint and respectfully refers this Court to the “Notice of Intent to Arbitrate” for its true content and meaning.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Complaint and respectfully refers this Court to the “Notice of Hearing” for its true content and meaning.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Complaint and respectfully refers this Court to the subpoena for its true content and meaning.

17. With respect to paragraph “17” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Complaint and respectfully refers this Court to the

Award for its true content and meaning.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Complaint and respectfully refers this Court to the Award for its true content and meaning.

20. With respect to paragraph “20” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

21. With respect to paragraph “21” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Complaint and respectfully refers this Court to the HVCA for its true content and meaning.

23. With respect to paragraph “23” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied and the defendant respectfully refers this Court to the statute for its true content and meaning.

24. With respect to paragraph “24” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

25. With respect to paragraph “25” of the Complaint, the allegations contained therein are plaintiff’s characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied and

the defendant respectfully refers this Court to the CPLR for its true content and meaning.

26. With respect to paragraph "26" of the Complaint, the allegations contained therein are plaintiff's characterizations of its case to which no response is required. To the extent that the allegations may be deemed allegations of fact pertaining to SUPERIOR, they are denied.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

27. The claims set forth in the Complaint fail to state a cause of action for which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

28. The plaintiff's claims are barred by the doctrine of laches, unclean hands, waiver and equitable estoppel and legal estoppel and preemption.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

29. Any damages the plaintiff suffered were due to the actions and culpable conduct of the plaintiff or its agents and were not causally related to the defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

30. The plaintiff has not obtained jurisdiction over the defendant.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

31. Upon information and belief, the plaintiff is attempting to collect wages for individuals that were not employed by SUPERIOR and were not covered by any collective bargaining agreement and there is no obligation for the defendant to pay these employees.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

32. To the extent the Complaint demands monies from the defendant where no collective bargaining agreement exists that covers these employees, the Court lacks subject matter jurisdiction over these contributions and the Complaint fails to state a claim upon which



relief may be granted, and the demand for wages violates state law.

**WHEREFORE**, having fully answered all the counts of the Complaint, the defendant, SUPERIOR MAINTENANCE, INC., respectfully demands judgment:

- (a) Dismissing the Complaint in its entirety; and
- (b) against the plaintiff for the costs, attorneys' fees and disbursements of this action; and
- (c) for such other and different relief as the Court may deem just and proper.

Dated: White Plains, New York  
November 13, 2007

Yours, etc.,  
TRIVELLA, FORTE & SMITH, LLP

By: RAQUEL A. WILLIAMS, ESQUIRE (RW 4641)  
Attorneys for the Defendant  
1311 Mamaroneck Avenue, Suite 170  
White Plains, New York 10605  
Telephone: (914) 949-9075  
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To: Office of the General Counsel  
SEIU, Local 32BJ  
LYLE D. ROWEN, ESQ.  
Associate General Counsel  
SEIU, Local 32BJ  
Attorney for the Plaintiff  
101 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, New York 10013  
Telephone: (212) 388-3452  
Facsimile: (212) 388-2062

## AFFIDAVIT OF SERVICE BY MAIL


STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WESTCHESTER )

MICHELLE SALERNO, being duly sworn, deposes and says:

That I am not a party to this action; am over 18 years of age and reside in Westchester County, New York; that on the 15<sup>th</sup> day of November, I served the within ANSWER TO COMPLAINT TO ENFORCE ARBITRATION AWARD in the action, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ v. SUPERIOR MAINTENANCE, INC. 07-CV-8339 upon:

LYLE D. ROWEN, ESQ.  
101 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, New York 10013

by depositing a true copy of the same enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
MICHELLE SALERNO

Sworn to before me this  
11<sup>th</sup> day of November, 2007.

**Notary Public**  
**RAQUEL A. WILLIAMS**  
 Notary Public, State of New York  
 No. 02WI6072574  
 Qualified in Westchester County  
 Commission Expires April 8, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15<sup>th</sup>, 2007, I served the foregoing ANSWER TO COMPLAINT TO ENFORCE ARBITRATION AWARD on Lyle D. Rowen, Esq., Attorney for the Plaintiff, by electronic mail, in the action, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ v. SUPERIOR MAINTENANCE, INC. 07-CV-8339.

TRIVELLA, FORTE & SMITH, LLP

A handwritten signature in black ink, appearing to read 'Raquel A. Williams', is written over a horizontal line.

By: RAQUEL A. WILLIAMS, ESQUIRE (RW 4641)

Attorneys for the Defendant

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White Plains, New York 10605

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